



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

March 31, 2021

VIA ECF

The Honorable Colleen McMahon
Chief United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: **United States v. Michael Carroll and Michael Pappagallo,**
19 Cr. 545 (CM)

Dear Chief Judge McMahon:

The Government respectfully submits the attached proposed order of *nolle prosequi* dismissing the Indictment in this case pursuant to Federal Rule of Criminal Procedure 48(a).

Beginning in or about October and November 2020, we received additional information, including presentations from counsel for both defendants, concerning, among other things, particular accounting adjustments that form a significant portion of the allegedly misstated metric charged in the Indictment. In light of this information, we conducted extensive additional investigation, including discussions with cooperating witnesses, Brixmor employees, and forensic accountants. Ultimately, we concluded that we cannot prove beyond a reasonable doubt that the conduct that resulted in these particular accounting adjustments, namely, the deferral of a category of accounting items known as “unvouched” purchase orders from the third quarter of 2013 to the fourth quarter of 2013, was part of a scheme to defraud.

Because the charged metric—same-store net operating income growth—is a quarter-over-quarter comparison, removing the purchase order deferral from the scheme affects not only the allegations in the Indictment for the third and fourth quarters of 2013, but also the allegations for the third and fourth quarters of 2014. The adjustment thus affects the four quarters with the largest misstatements alleged in the Indictment. After removing this deferral, and the accompanying accounting adjustments, from the allegations, we do not believe we can establish beyond a reasonable doubt the quantitative materiality of the alleged misstatements with respect to the multi-year scheme alleged in the Indictment, which goes to an essential element of the charged offenses.

